

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESSICA HEPPARD, on behalf of
herself and all others similarly situated,

Plaintiff,
v.

DUNHAM'S ATHLEISURE
CORPORATION,

Defendant.

CASE NO. 5:23-CV-10834
HON. JUDITH E. LEVY
MAG. ANTHONY P. PATTI

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**DEFENDANT'S SUPPLEMENTAL FILING IN SUPPORT OF ITS
MOTION TO CERTIFY ORDER FOR INTERLOCUTORY APPEAL
AND STAY THIS ACTION PENDING APPELLATE REVIEW**

Defendant Dunham's Athleisure Corporation, by its undersigned counsel submits the following supplemental filing in support of its Motion to Certify Order for Interlocutory Appeal and Stay this Action Pending Appellate Review (ECF No. 24).

On January 12, 2024, the Southern District of Ohio issued an order of relevance to Dunham's Motion to Certify. See *Collins v. Greater Cincinnati Behav. Health Servs.*, No. 23-cv-578, 2024 U.S. Dist. LEXIS 7036 (S.D. Ohio Jan. 12, 2024), attached as Exhibit A. The *Collins* Court analyzed the conflict between Fed. R. Civ. P. 23 and Ohio's Minimum Fair Wage Standard Act's (“OMFWSA”) opt-in requirement and held that the opt-in requirement provided for in the state statute “defines the scope of remedies available for the substantive rights” under the OMFWSA. *Id.* at *10 (internal quotations omitted). Consequently, “permitting a Federal Rule 23 class action brought under OMFWSA’s overtime provision to proceed would violate the [Rules Enabling Act].” *Id.* at *13.

In reaching this conclusion, the *Collins* court addressed this Court’s December 8, 2023, order and found that the Rules Enabling Act analysis set forth in *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010) should be applied to this issue. “Therefore,” the *Collins* court wrote, it “disagrees with *Heppard* and finds that the *Hine* Court appropriately applied the REA analysis laid out in *Shady Grove*.” *Collins* at *13.

Defendant submits this filing as notice to the Court of this recent decision, in support of Defendant's prior request to Certify this Court's December 8, 2023, Opinion and Order for Interlocutory Appeal and to stay this case pending any appeal.

Dated: January 23, 2024

/s/ Jessica G. Kingston

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document was served upon all parties and/or attorneys of record to the above cause herein at their respective addresses as disclosed on the pleadings on January 23, 2024, via:

<u> </u>	U. S. Mail	<u> </u>	Facsimile
<u> </u>	ECF Filing	<u> </u>	Hand Delivery
<u> </u>	E-Mail	<u> </u>	Federal Express

/s/ Jessica G. Kingston

Jessica G. Kingston